

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

ORDER

Plaintiff Joel Thomas moves for default judgment against Defendants R.A. Potts Contracting Group, Inc., and R.A. Potts for failing to respond to his complaint within the required time frame [Doc. # 8]. After this Court issued a show cause order [Doc. # 9], Defendants responded [Doc. # 12] that Thomas failed to serve the complaint with the subpoena, as required by Fed. R. Civ. P. 4(c)(1). With the Court's permission, Defendants filed their answer on December 31, 2007.

Because Defendants have now filed an answer, there is no basis for default. Thus, the Court, exercising its discretion under Rule 55(b)(2), *see F.T.C. v. Backers Brand Meats, Inc.*, 562 F.2d 9, 10 (8th Cir. 1977), accordingly DENIES Thomas's motion for default judgment.

IT IS SO ORDERED.

s/ Nanette K. Laughrey
NANETTE K. LAUGHREY
United States District Judge

Dated: January 28, 2008
Jefferson City, Missouri